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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 734

RONNIE M. MOORE,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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RONNIE M. MOORE,

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STATE OF LOUISIANA,

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioner respectfully prays that a writ of certiorari issue to review the decree of the Supreme Court of Louisiana entered in the above-mentioned cause on October 10, 1963, which denied (one judge dissenting) petitioner's Application for Writs of Mandamus, Certiorari and Prohibition, thus affirming the verdict of conviction rendered by the Nineteenth Judicial District Court of East Baton Rouge Parish, Louisiana (herein called the District Court), on April 11, 1962.

OPINIONS BELOW

The District Court found petitioner guilty for oral reasons assigned, without written opinion. The memorandum opinion of the Supreme Court of Louisiana (Judge McCaleb dissenting) is unreported and appears in Appendix B hereto, *infra*, p. 26.

JURISDICTION

The verdict of the District Court was rendered at the close of defendant's case, on April 11, 1962. Petitioner's motion for a new trial and in arrest of judgment were overruled on April 16, 1962. Petitioner's Application to the Supreme Court of Louisiana for Writs of Mandamus, Certiorari and Prohibition was denied on October 10, 1963.

The jurisdiction of this Court is based upon 28 U. S. C. Section 1257(3).

QUESTIONS PRESENTED

Petitioner was convicted of operating a mechanical contrivance and device to which loud-speakers were attached in such manner as to be a nuisance to the neighborhood, in alleged violation of an ordinance of the Parish of East Baton Rouge. The evidence showed that petitioner was arrested pursuant to orders of the senior police officer present, for the act of turning on a loud-speaker during a demonstration against racial discrimination and allegedly oppressive law enforcement, in Scotlandville, a suburb of Baton Rouge.

The Federal questions are:

1. Whether petitioner's arrest for turning on a loud-speaker, during a meeting to protest against racial segregation and allegedly oppressive law enforcement, violated petitioner's constitutional rights of free speech and free assembly under the due process clause of the Fourteenth Amendment?

2. Whether the refusal of the District Court to order desegregation of the courtroom during petitioner's trial violated petitioner's constitutional right to a fair trial under the due process clause of the Fourteenth Amendment?

ORDINANCE INVOLVED

Petitioner was convicted of operating a mechanical contrivance and device to which loud-speakers were attached in such manner as to be a nuisance to the neighborhood, in alleged violation of an ordinance of the Police Jury of East Baton Rouge Parish. The ordinance is printed in Appendix A, *infra*, page 25.

STATEMENT

Both the factual and the legal background of the present case are familiar to this Court from a series of recent Louisiana cases.[1] So is the specific conflict from which it arose—the continuing struggle over civil rights in Baton Rouge, between the Negro students of Southern University—the largest land-grant segregated Negro university in the United States—and the local law-enforcement officials.[2]

Southern University, a State-supported institution with 5,000 Negro students, is located in the Parish of East Baton

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[1] *Bush* v. *Orleans Parish School Board*, 364 U. S. 500 (1960); *Louisiana ex rel. Gremillion* v. *N. A. A. C. P.*, 366 U. S. 293 (1961); *Garner* v. *Louisiana*, 368 U. S. 157 (1961); *Taylor* v. *Louisiana*, 370 U. S. 154 (1962); *Lombard* v. *Louisiana*, 83 Supreme Court 1122 (1963). — U. S. —.

[2] See *Garner* v. *Louisiana*, 368 U. S. 157 (1961).

Rouge, just North of the City of Baton Rouge, between the Mississippi River and the main highway to the North (U. S. 61). Just East of the University is Scotlandville, a small unincorporated town located around the acute-angled junction of U. S. Highway 61 and a smaller road also running North (State 19), with a railroad crossing located at the junction point. The incidents which gave rise to this case began on the University premises and culminated on the streets of Scotlandville.

Starting on December 12, 1961, the day after announcement of the decision of this Court in *Garner* v. *Louisiana*, 368 U. S. 157, a series of demonstrations[3] (including both "sit-ins" and picketing) were started in and near Baton Rouge by students of Southern University, and continued for several days; and the authorities responded with 23 arrests, all for picketing, on December 14th. On the 15th, the next morning, a mass demonstration started on the University premises—to protest against these arrests, against the allegedly oppressive policy and tactics of the local law enforcement officials, and against racial segregation in general. About 10 A.M. a large body of demonstrating students—comprising the bulk of the student body, according to the police (T. 144)*—moved East off the Uni-

[3] These demonstrations are involved in, and described in the record in, *Congress of Racial Equality* v. *Clemmons*, 323 Federal (2d) 54 (C. C. A. 5th, 1963), now before this Court on petition for writ of certiorari; see particularly pages 134, 202, and 234 of that record.

* References to the Record are designated by the symbol "R". Although a transcript of the trial was made by an official court stenographer, in accordance with Louisiana practice it was not part of the Record before the Louisiana Supreme Court. To supplement the Record the transcript is submitted with this petition and references to it are designated by the symbol "T."

versity premises to attend a meeting at the Camphor Memorial Church, located on U. S. Highway 61 just to the North. A car, equipped with a rented loud-speaker system and containing petitioner (chairman of C. O. R. E. in Baton Rouge) and four other students, accompanied the students on this march; and the loud-speaker system was used intermittently for playing music and for speaking (T. 131-133, 165, 173, 176-177). At the end of the meeting, the students emerged from the church and continued demonstrating, sometimes overflowing onto the streets, so that at times traffic was kept open by the police officers and at other times it was blocked (T. 39, 65, 79, 103, 138, 175-176). There was no indication of violence (T. 193). About this time, the car containing petitioner moved a few blocks North on Highway 61, turned East, and then returned South on State 19 (T. 26, 39, 101, 131-133); and again the loud-speaker was used intermittently for music and speeches (T. 26, 99, 134, 197). Several Parish police cars were patrolling in the vicinity all morning (T. 116, 164); and about this time Captain Henderson, the senior officer present, heard the loud-speaker from a point several blocks away (T. 132-135). Shortly thereafter, at a time (about 11 o'clock) when the loud-speaker was stopped (T. 57), Captain Henderson ordered the other police officers to arrest the occupants of the car if the loud-speaker was turned on again (T. 49, 56, 70, 78, 89, 115, 178). As the car came South on State Highway 19, the loud-speaker was used again, then shut off (T. 26, 99, 134, 197); and two police officers promptly followed Captain Henderson's orders and arrested all the occupants of the car (T. 99, 101, 111). The arresting officers acted purely on the basis

of Captain Henderson's instructions, and not as a result of a decision of their own that a violation of law was involved (T. 89, 106, 121, 200).[4] No warning was given against playing the loud-speaker (T. 176-177).

The testimony on the morning's events came from Captain Henderson, from four other police officers, and from several persons living or working in Scotlandville. Some of the testimony is contradictory and much is confusing. The State's case depended entirely upon evidence given by its own police officers; and such evidence is strikingly inadequate on several critical points. The record makes clear how little the policemen really knew on basic elements of proof. It is clear that *inter alia* petitioner spoke against racial discrimination over the loud-speaker (T. 79, 93, 151-153, 160, 189), but no one knew much of what he said. The policemen heard the loud-speaker—or at least *a* loud-speaker, not specifically identified—several times during the morning, but almost always from several blocks away; and so they were unable to distinguish any (or many) words, or even whether what they heard was words or music (T. 27, 29, 42-43, 45, 50-51, 62, 69, 74, 79, 100, 106, 108, 110, 114, 166-169, 172, 182-183). They were not sure whether or not petitioner was giving instructions to the demonstrating students (T. 65, 69, 93 ff., 166-167). The policemen naturally testified that the noise was loud—a point disputed by local residents, as indicated below—and one of the arresting officers made clear his criterion on this point:

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[4] See also the description of this arrest in the record in *Congress of Racial Equality* v. *Clemmons*, 323 Federal (2d) 54 (C. C. A. 5th, 1963), page 78.

"Well, it was loud enough to draw a crowd." (T. 114)

Not a single complaint was made about the noise by anyone in the neighborhood (T. 58, 68, 106, 120-121, 176). Several persons working or living in the immediate area testified that the noise was not loud enough to disturb them (T. 225, 227, 228, 230, 232-234, 236).

The atmosphere of the trial, and indeed of the background (and basis) of the entire proceeding, is vividly illustrated by the prosecution's treatment of defendant's witnesses. The cross-examination of these witnesses was concentrated heavily on two issues—whether each witness was a member of the N. A. A. C. P., and whether the witness was a member of C. O. R. E. (T. 226, 228-229, 231, 234-235).

Petitioner was charged with violating an ordinance of the Police Jury of East Baton Rouge Parish, and arraigned on March 30, 1962, and he pleaded "not guilty". The Bill of Information (R. 24) alleged that he "did operate and permit the operation of a mechanical contrivance and device to which loud speakers were attached in such manner as to be a nuisance to the neighborhood."

Petitioner's motion for a bill of particulars was denied (R. 34, 27). The said motion had sought to require setting forth the alleged offense in sufficient detail so as to permit petitioner to prepare a defense. The motion asked that petitioner be advised of the neighborhood or neighborhoods where the offense allegedly occurred, whether petitioner was accused of playing music over the loud speaker or merely speaking into it, and whether any residents of the neighborhood filed any complaints. The District Court

denied the motion for oral reasons assigned on April 9, 1962.

At the same time, petitioner filed a motion to quash the information (R. 36), on the ground that it was unduly vague as to the precise offense charged, and that the prosecution deprived petitioner of the rights, privileges, immunities and liberties guaranteed to him by the Fourteenth Amendment. This motion was also denied for oral reasons assigned on April 9, 1962.

The case was called for trial on April 10, 1962. Counsel for petitioner filed a motion to desegregate the courtroom (R. 38, 28), on the ground that petitioner could not receive a fair trial in a court room in which there is judicially-sanctioned racial segregation, and that such a trial would violate petitioner's rights under the Fourteenth Amendment. The motion was denied, on the grounds that this trial was concerned only with the guilt or innocence of petitioner, and that this motion had nothing to do with that issue.

The trial took place before Judge Fred S. LeBlanc on April 10 and 11, 1962. Defendant moved for a directed verdict of acquittal at the end of the prosecution's case (T. 218-220). The motion was denied (T. 220 ff.) on the ground that the State had made out a *prima facie* case of the offense as charged.

At the end of the trial, the Court found the petitioner guilty for oral reasons assigned. Subsequently, after the filing of written notice of intention to apply to the Supreme Court of Louisiana for writs of mandamus, certiorari and

prohibition, petitioner was released on $500 bail on April 12, 1962.

A motion for a new trial was made (R. 41), on the grounds that the judgment was contrary to the law and the evidence, and that the denial of the motion to desegregate the courtroom was a violation of petitioner's rights under the Fourteenth Amendment. This motion was denied on April 16, 1962, for oral reasons assigned.

A motion in arrest of judgment was made (R. 44), on the grounds *inter alia* that the denial of the motion to desegregate the courtroom was a violation of petitioner's rights under the Fourteenth Amendment, and that this prosecution violated his right to freedom of speech under the Fourteenth Amendment. This motion was denied on April 16, 1962, for oral reasons assigned.

On April 24, 1962, the petitioner was sentenced to pay a fine of $50.00 and costs, or in default of payment thereof to be confined in the parish jail for thirty days, and in addition thereto to be confined in the parish jail for thirty days.

The petitioner sought review of the judgment of conviction and sentence by the Supreme Court of Louisiana. Under Louisiana law, no appeal procedure was available, since the sentence was for less than six months and the fine was under $300.00. Review was sought, however, under the general supervisory jurisdiction of the Supreme Court (Louisiana Constitution, Article VII, Section 10), and an application was made to that Court for writs of mandamus, certiorari and prohibition. The Louisiana Supreme Court held (with Judge McCaleb dissenting) that there was no error in the rulings of the District Court.

HOW FEDERAL QUESTIONS WERE RAISED

The Federal questions here presented were specifically raised in the District Court by written motion to quash the bill of information (R. 36), by written motion to desegregate courtroom (R. 38), by written motion for a new trial (R. 41) and by written motion in arrest of judgment (R. 44). Each of the said motions was overruled for oral reasons assigned.[3] In petitioner's Application to the Supreme Court of the State of Louisiana for writs of Mandamus, Certiorari, and Prohibition, specific reference was again made to the Federal questions sought to be reviewed (R. 8 ff.).

Petitioner's Federal claims were thus made at the earliest opportunity and were renewed at each stage of the proceeding below.

REASONS FOR GRANTING THE WRIT

Petitioner's conviction herein was based upon the testimony of four police officers and their supervisor on a vaguely worded charge of nuisance. While there was some incidental mention of the possibility of holding petitioner responsible for the alleged nuisance committed by other persons in thronging the streets and sometimes blocking traffic, the proof wholly fails to show that petitioner was responsible for the conduct of such other persons (T. 53, 65, 69-71, 91 ff., 106, 166-167). The alleged nuisance there-

[3] In the case of the motion to desegregate the courtroom, there is a reference in the minutes of the court to the reasons given (R. 28-30).

fore can only derive from the volume of noise emerging from the loud-speaker. On this point the uncorroborated testimony of police officers, during a period of acute conflict between Negro demonstrators and law-enforcement officials, is obviously a weak reed on which to hang a whole case, especially when disputed by independent witnesses; and the record is replete with indications that the principal interest of the police and other law-enforcement officials was in breaking up the peaceful assembly and in further persecuting members of responsible organizations leading the Negro protest movement in Louisiana (T. 226 ff.). In addition, the refusal of the trial judge to order desegregation of the courtroom, in a trial of this type, raises the most serious questions about the proper administration of justice.

CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT

The arrest, trial and conviction of petitioner under the circumstances stated above violated petitioner's constitutional rights in two ways; and the decisions to the contrary in the Louisiana courts are in direct conflict with applicable decisions of this Court and with basic principles of constitutional law set forth therein.

Free Speech. Petitioner's arrest and conviction for turning on a loud-speaker, during a meeting to protest against racial segregation and allegedly oppressive law enforcement, violated petitioner's constitutional rights of free speech and free assembly under the due process clause of the Fourteenth Amendment.

Peaceful demonstrations on the streets are constitutionally protected. The right of peaceful assembly to protest grievances is one of the fundamental constitutional rights, protected against State interference by the due process clause of the Fourteenth Amendment. *DeJonge* v. *Oregon*, 299 U. S. 353 (1937); *Edwards* v. *South Carolina*, 372 U. S. 229 (1963). Any "'. . . state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.'" *N. A. A. C. P.* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 460-461 (1958). Indeed, publicly-enforced racial segregation is itself a violation of constitutional rights; and a meeting to protest against such public enforcement is, as this Court put it in the *Edwards* case, *supra*,

> "'. . . an exercise of these basic constitutional rights in their most pristine and classic form.'" (372 U. S. at 235)

Moreover, this Court has recognized specifically that a peaceful street demonstration is an appropriate way of exercising these rights, for "'City streets are recognized as a normal place for the exchange of ideas by speech or paper'" (*Kovacs* v. *Cooper*, 336 U. S. 77, 87 (1949); compare *Schneider* v. *State*, 308 U. S. 147 (1939); *Valentine* v. *Christensen*, 316 U. S. 52 (1942)). This Court has also recognized that group action may often be a more effective, and therefore appropriate, method of advocating ideas. *N. A. A. C. P.* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958). Indeed, such peaceful demonstrations directed against segregation may themselves be regarded as part of the "free trade in ideas," even apart from any verbal expressions uttered there. *Garner* v. *Louisiana*, 368 U. S.

157, 201 (1961) (concurring opinion, by Mr. Justice Harlan). The right to carry on such demonstrations, while of course not absolute, thus occupies an honored place in our constitutional system.

Communication at such meetings by the use of loud-speakers obviously raises special problems, because of the possible impact of noise on the areas nearby; yet a reasonable use of such loud-speakers is also constitutionally protected as a form of free speech. *Saia* v. *New York*, 334 U. S. 558 (1948); *Kovacs* v. *Cooper*, 336 U. S. 77 (1949). Indeed loud-speakers have been recognized as "... indispensable instruments of effective public speaking." *Saia* v. *New York*, *supra*, at 561. In the *Saia* case, this Court held that the use of such loud-speakers may be regulated by a narrowly-drawn statute, regulating such matters as the time and place of their use and the volume of noise;[6] yet the court warned that in such a situation the Courts must exercise caution in reviewing proceedings, for "Annoyance at ideas can be cloaked in annoyance at sound" (334 U. S. at 562). Equally pertinent and realistic here is the warning by Mr. Justice Jackson in connection with searches and seizures:

> "We must remember that the extent of any privilege of search and seizure without warrant which we sustain, the officers interpret and apply themselves and will push to the limit." (Dissenting in *Brinegar* v. *U. S.*, 338 U. S. 160, 182 (1949)).

While the ruling in *Saia* v. *New York*, *supra*, was modified —to an extent which is not wholly clear— in *Kovacs* v. *Cooper*, 336 U. S. 77 (1949), also a 5 to 4 decision, the

[6] See also *Shelton* v. *Tucker*, 364 U. S. 479 (1960).

latter decision did not affect any of the principles set forth above, except that a conviction on a more broadly-worded statute was upheld in a case where the majority of the Court felt that the facts would satisfy the requirements of a narrowly-drawn law.

In such cases involving First- and Fourteenth-Amendment rights, it does not matter that the claim for suppression is based on an allegation of nuisance, for the rights of free communication have been held to prevail against such an argument. *Lovell* v. *Griffin*, 303 U. S. 444 (1938).

This Court has defined the proper extent of Supreme Court review in cases of this type coming up from the State courts. In *Edwards* v. *South Carolina*, *supra*, the Court said:

> "In cases in which there is a claim of denial of rights under the Federal Constitution, this court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded."

See also *Feiner* v. *New York*, 340 U. S. 315 (1951). In this Court, therefore, the question in this case is whether—taking a fresh look at the facts as they appear in this record—the activity for which petitioner was arrested and convicted falls within (a) the area of free speech and assembly, constitutionally protected, or (b) the area of valid regulation by the state. (Assuming, that is, that there is *any* evidence which would support a conviction, *Thompson* v. *Louisville*, 362 U. S. 199 (1960).) These two areas are of course in essence polar concepts: where one ends, by definition the other starts; and the boundary between these two areas will shift back and forth according to the

circumstances of each case, as viewed by this Court. See *Thomas* v. *Collins*, 323 U. S. 516 (1945).

Despite the confusion on detail, the facts in this case as set forth above speak for themselves. Only a few points need to be re-emphasized here. The whole case—and two others now before this court—arose out of a series of demonstrations against racial segregation in Baton Rouge, immediately after the announcement of the opinion of this court in *Garner* v. *Louisiana*, 368 U. S. 157 (1961). Petitioner was arrested by a Parish policeman, acting on the explicit instructions of the senior police officer in the area. Those instructions were to arrest petitioner if he turned on the loud-speaker system again, with no regard for how loud it would be (T. 89, 106, 121, 260); because that officer was of the opinion that further use of the loud-speaker system would be such as to constitute a nuisance. Not a single complaint had been received that it was an annoyance to the neighborhood. The only testimony presented by the state as to loud noise, from the police officers, was in conflict with the testimony of independent witnesses. Typical of the police testimony were remarks by police officers that they did not like the subject-matter (T. 119), and that the loud-speaker was loud enough to draw a crowd (T. 114). If the latter is the test of punishable conduct, clearly the right of free assembly is unlikely to be widely exercised. In this situation the testimony is reminiscent of the comment in a very similar recent opinion of this court:

> "... the police ... were left with nothing to support their actions except their own opinions that it was a breach of the peace for petitioners to sit peacefully

> in a place where custom decreed they should not sit."[7]

The record thus falls far short of showing the sort of nuisance to the neighborhood which would warrant interference by the Parish authorities.

Segregation in the Courtroom. The refusal of the District Court to order desegregation of the courtroom during petitioner's trial violated petitioner's constitutional right to a fair trial under the due process clause of the Fourteenth Amendment.

At the start of the trial petitioner made a motion requesting the trial judge to order the courtroom to be desegregated during the trial; and the judge refused (R. 38, 28-30). This ruling of course violated the constitutional rights of Negro spectators at the trial; for as this Court said only last term in *Johnson* v. *Virginia*, 373 U. S. 61, 62 (1963), a case involving the conviction of a Negro for sitting in the "white" section of a State courtroom:

> "... it is no longer open to question that a state may not constitutionally require segregation of public facilities ... State-compelled segregation in a court of justice is a manifest violation of the State's duty to deny no one the equal protection of the laws."[8]

The principle thus reaffirmed in the *Johnson* case is equally determinative of petitioner's right in this proceed-

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[7] *Garner* v. *Louisiana*, 368 U. S. 157, 174 (1961).

[8] See also *Derrington* v. *Plummer*, 240 Federal (2d) 922 (C. C. A. 5th, 1956), certiorari denied, 353 U. S. 924 (1957); *Seniors* v. *Arnold*, 284 Federal (2d) 109 (C. C. A. 5th, 1960).

ing. The insistence by the state authorities on maintaining segregated seating arrangements at petitioner's trial was clearly a continuing "manifest violation of the state's duty to deny no one the equal protection of the laws"; but it was also something more than merely a negative denial of rights due. For, under this ruling, the State authorities were using the arrangements in the courtroom to carry out an affirmative demonstration of the State's persistent, oft-restated[9]—and unlawful—policy that Negroes are to be segregated, and their inferior status thus emphasized. Such an unlawful use of the courtroom in which petitioner was being tried inevitably affected the atmosphere of the trial. Petitioner, a Negro on trial for an incident arising during a protest against racial segregation, could not possibly receive a fair trial under these conditions. When racial segregation is flaunted in a temple of justice, the error infects the entire proceedings.

The point is a novel one in this Court, but past decisions of this Court—on racial segregation and on procedural due process—have pointed directly toward this conclusion.

This Court has given frank recognition to one of the central facts of American experience, that racial segregation is "inherently unequal" in its effects (*Brown* v. *Board of Education*, 347 U. S. 483, 495 (1954)), i.e., that enforced

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[9] In addition to manifold legislation covering specific situations, the Louisiana legislature in 1960 adopted the following preface to a joint resolution concerning the possible integration of any tax-supported facility in the state: "Whereas, Louisiana has always maintained a policy of segregation of the races, and whereas it is the intention of the citizens of this sovereign state that such a policy be continued. . . ." (Act. No. 630 of 1960, to amend Article X of the Louisiana Constitution.)

segregation is an explicit expression of the doctrine of the racial superiority of whites and the racial inferiority of Negroes, and a principal means of implementing that doctrine. In particular, this Court has long recognized the striking importance of this principle in the administration of justice; for, nearly 100 years ago, this Court said:

> "The very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others."[10]

The recognition that publicly-enforced segregation necessarily means inequality has been followed out through all its manifold implications in the torrent of litigation which has followed *Brown* v. *Board of Education*, *supra*; and in that litigation this Court has evolved a judicial policy which, while steadfast in basic principle, is flexible in its adaptation to all sorts of special circumstances and problems, and is in addition realistically sensitive to the importance of intangible factors. In the process of all sorts of traditional attitudes and practices have come in

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[10] *Strauder* v. *West Virginia*, 100 U. S. 303, 308 (1880). The action of a state judicial officer, taken in the performance of his official duties, is of course "state action" quite as much as the analogous action of legislative or executive officers; and so on the Fourteenth Amendment guarantees of due process and equal protection apply. See also *Virginia* v. *Rives*, 100 U. S. 313, 318 (1880); *Shelley* v. *Kraemer*, 334 U. S. 1 (1948).

for re-examination. For example, in cases where in the nature of things those most directly affected by segregation cannot or will not appear, other parties have been permitted to raise the issue of racial segregation. *Barrows* v. *Jackson*, 346 U. S. 249 (1953); compare *N. A. A. C. P.* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958).

The requirement of procedural due process is a major feature of modern constitutional law. Repeated decisions of this Court have indicated that the basic elements of a fair trial, guaranteed to all defendants by the due process clause, include more than the obvious basic procedural necessities[11] which stand out in a formal record—and, specifically, that such guarantees extend to intangible factors. In particular, the pervading atmosphere of a trial has been recognized as a major factor affecting its outcome;[12] and so trials conducted in an atmosphere hostile to the defendant and his rights have been held a denial of due process. See *Moore* v. *Dempsey*, 261 U. S. 86 (1923), and *Frank* v. *Mangum*, 237 U. S. 309 (1915). While the cases litigated have generally involved prejudice which is not only dominant in the proceeding but rancorously expressed, the latter is not an indispensable element in these decisions. The principle is a broader one, and extends to

[11] The Court's insistence upon the main elements of procedural due process has extended over many decades. Compare for example the strikingly similar cases (and statements of fact) in *Pierre* v. *Louisiana*, 306 U. S. 354 (1939), and *Eubanks* v. *Louisiana*, 356 U. S. 584 (1958).

[12] Compare the cases in which newspaper or television campaigns or announcements before trial have created an atmosphere where a fair trial is impossible. See for example *Irvin* v. *Dowd*, 366 U. S. 717 (1961); *Rideau* v. *Louisiana*, 373 U. S. 723 (1963).

long-established public demonstrations of the principle of racial inequality, enforced by public authority, even if their current expression almost verges upon the gentlemanly. Indeed, a principle which is so long-established as to command wide and almost unconscious acceptance is likely to have more pervasive effects—especially when it bears the stamp of approval from public authority.

In considering the basic elements of a fair trial, we are dealing here with a constitutional principle of commanding importance; as Mr. Justice Frankfurter recently put it,[13]

> "More than one student of society has expressed the view that not the least significant test of the quality of a civilization is its treatment of those charged with crime, particularly with offenses which arouse the passions of a community. One of the rightful boasts of Western civilization is that the State has the burden of establishing guilt solely on the basis of evidence produced in court and under circumstances assuring an accused all the safeguards of a fair procedure."

The application of these principles to the specific facts of the present case is clear enough. No principle of wide applicability is necessarily involved. In the trial following an arrest arising directly out of a protest against racial discrimination, the insistence by the State authorities on maintaining in the courtroom itself the accepted symbols of racial superiority (and inferiority) infects the entire proceedings, and automatically prevents defendant for receiving that fair trial required by the due process clause.

---

[13] Concurring in *Irvin* v. *Dowd*, 366 U. S. 717, 729 (1961).

IMPORTANCE OF THE FEDERAL QUESTIONS

A major advantage of democratic institutions is that, when they are operating freely, major changes in the economic and social structure can be carried out in a peaceful and fairly orderly manner. In recent decades, and particularly in connection with the rapidly increasing Negro protest against historic injustices, an increasing part of this Court's work has been concerned with protecting the freedom of these processes of peaceful change, and with implementing the constitutional guarantee of equal treatment, in all sorts of novel situations. What is involved here is therefore more than the protection of individual rights; it is also the guarantee, on behalf of the entire country, that an opportunity is provided for the processes of change to be peaceful and not violent. In this process it is of course also important to ensure the protection of other citizens in the pursuit of their different activities—but to do so with a sense of perspective. It must be remembered that great historic movements of spontaneous protest against oppression are inherently untidy and inherently unsettling to all sorts of established arrangements; it cannot be expected that they will never create a traffic jam, or never create enough noise to annoy hostile policemen. The two Federal questions presented here involve logical and important next steps in carrying out the Court's role in this historic process.

The first question here involves the extent of protection of free speech and free assembly against arbitrary police action. In such a case this Court will review the evidence and reach its own judgment on whether the interference here with free expression was required by some countervailing public interest. *Niemotko* v. *Maryland*, 340 U. S.

268 (1951); *Feiner* v. *New York*, 340 U. S. 315 (1951). The testimony of the police officers here, uncorroborated by a single independent witness, falls short in important particulars of proving any such need. The fact that the complaint is phrased in terms of nuisance does not automatically provide the power to muzzle free expression. *Lovell* v. *Griffin*, 303 U. S. 444 (1938).

The use of sound trucks does of course provide problems for legitimate public regulation. In *Saia* v. *New York*, 334 U. S. 558 (1948), a majority of this Court held that such use may be regulated by narrowly-drawn legislation, directed to such matters as the appropriate time and place of such use and the volume of noise; and in *Kovacs* v. *Cooper*, 336 U. S. 77 (1949), the Court upheld a conviction under an ordinance phrased in general terms, where a majority of the Court felt that the proof would satisfy the requirements of such a statute. Both were 5-to-4 decisions. The state courts have been having much difficulty in administering the somewhat conflicting rules laid down in these two decisions. See for example *Haggerty* v. *Associated Farmers of California*, 44 California (2d) 60, 279 Pacific (2d) 734 (1955); *Wollam* v. *Palm Springs*, 29 California Reporter 1, 379 Pacific (2d) 481 (1963); *Commonwealth* v. *Geuss*, 168 Pennsylvania Superior 22, 76 Atlantic (2d) 500 (1950), affirmed, 368 Pennsylvania 290, 81 Atlantic (2d) 553 (1951), appeal dismissed for want of a substantial federal question, 342 U. S. 912 (1952); *State* v. *Fowler*, 79 Rhode Island 16, 83 Atlantic (2d) 67 (1951), and 80 Rhode Island 85, 91 Atlantic (2d) 27 (1952), reversed, 345 U. S. 67 (1953). Compare *State ex rel. Nicholas* v. *Headley*, 48 Southern (2d) 80 (Florida, 1950), and *Brinkman* v. *Gainesville*, 83

Georgia Appeals 508, 64 South Eastern (2d) 344 (1951). Clarification is needed on the extent of individual freedom and permissible public control in sound-truck cases, and the present case provides an appropriate opportunity.

The second point, a novel question in this Court, is a logical development from previous decisions. Certainly there is no place where publicly-enforced racial segregation is more inappropriate or offensive than in a court of justice, dedicated above all to equal rights before the law. The point is established as to the rights of spectators, *Johnson* v. *Virginia*, 373 U. S. 61 (1963), whose interest may be casual. Since attendance at court is voluntary, and for most people only an occasional event, challenges from spectators are likely to be—as they have been—rare. Not yet settled legally is the more serious matter, the impact on the rights of a Negro defendant—for whom the trial may result in loss of liberty (as here), or even life—who is required to stand trial on an issue involving equality in a courtroom where the State is blatantly asserting its belief in inequality. The elimination of segregation in courtrooms, of all places, is a major unfinished business in American democracy; and this case presents the issue squarely.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

PASSED: October 8, 1934

ORDINANCE

BE IT ORDAINED BY THE POLICE JURY OF THE PARISH OF EAST BATON ROUGE, in regular session convened, that from and after passage of this ordinance, it shall be unlawful for any person or persons, firm or corporation, to play, operate, or permit the playing or operation of phonographs, radios, bands, or any other mechanical contrivance or device which have loud speakers attached thereto, in such a manner as to be a nuisance to the neighborhood, it being the purpose of this ordinance not interfere (sic) with the legitimate and orderly playing of music, but to prohibit the playing of such music in a manner calculated to disturb the peace and quiet of the neighborhood.

Section 2. Be is further ordained, etc., that any person, firm, or corporation convicted for the violation of any of the provisions of this ordinance shall be fined in a sum not to exceed Fifty Dollars ($50.00), or imprisonment in the Parish jail for not more than thirty days, or both fine and imprisonment, within the discretion of the Court.

Section 3. Be it further ordained, etc., that the provisions of this ordinance do not apply to any municipality within the Parish of East Baton Rouge.

APPENDIX B

Memorandum Opinion of the Supreme Court of Louisiana, Judge McCaleb, Dissenting

SUPREME COURT OF LOUISIANA

New Orleans

No. 46,930 October 10, 1963

State of Louisiana

v.

Ronnie M. Moore

In re: Ronnie M. Moore applying for writs of mandamus, certiorari and prohibition

---

Writ refused. We find no error of law in the rulings of the District Court.

/s/ JWS
/s/ JBF
/s/ JBH
/s/ FWH
/s/ WBH
/s/ FWS

McCaleb, J., is of the opinion that writs should be granted.

A True Copy
Clerk's Office
Supreme Court of Louisiana
New Orleans
October 10, 1963

/s/ Harold A. Maise, Jr.
Deputy Clerk

[Seal]

Office Supreme Court, U.S.
FILED
FEB 3 1964
JOHN F. DAVIS, CLERK

No. 734

In the Supreme Court of the United States

OCTOBER TERM, 1963

RONNIE M. MOORE, PETITIONER

v.

STATE OF LOUISIANA, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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No._____

In the
Supreme Court of the United States

OCTOBER TERM, 1963

RONNIE M. MOORE, PETITIONER

v.

STATE OF LOUISIANA, RESPONDENT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

"A REVIEW ON WRIT OF CERTIORARI IS NOT A MATTER OF RIGHT, BUT OF SOUND JUDICIAL DISCRETION, AND WILL BE GRANTED ONLY WHERE THERE ARE SPECIAL AND IMPORTANT REASONS THEREFOR. THE FOLLOWING, WHILE NEITHER CONTROLLING NOR FULLY MEASURING THE COURT'S DISCRETION, INDICATE THE CHARACTER OF REASONS WHICH WILL BE CONSIDERED:

"(a) Where a state court has decided a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decisions of this court."

Rule 19, Paragraph 1, Subsection A of this Honorable Court's Rules.

Petitioner herein was charged in a bill of information as follows:

> ". . . unlawfully did violate an ordinance of the Police Jury of East Baton Rouge Parish, Louisiana, in that he did operate and permit the operation of a mechanical contrivance and device to which loudspeakers were attached in such manner as to be a nuisance to the neighborhood."

The ordinance allegedly violated referred to in the bill of information provides as follows:

> "BE IT ORDAINED BY THE POLICE JURY OF THE PARISH OF EAST BATON ROUGE, in regular session convened, that from and after passage of this ordinance, it shall be unlawful for any person or persons, firm or corporation, to play, operate, or permit the playing or operation of phonographs, radios, bands, or any other mechanical contrivance or device which have loud speakers attached thereto, in such manner as to be a nuisance to the neighborhood, it being the purpose of this ordinance not interfere (sic) with the legitimate and orderly playing of music, but to prohibit the playing of such music in a manner calculated to disturb the peace and quiet of the neighborhood.
>
> "Section 2. Be it further ordained, etc., that any person, firm, or corporation convicted for the violation of any of the provisions of this ordinance shall be fined in a sum not to exceed Fifty Dollars ($50.00), or imprisonment in the Parish jail for not more than thirty days, or both fine and imprisonment, within the discretion of the Court.

"Section 3. Be it further ordained, etc., that the provisions of this ordinance do not apply to any municipality within the Parish of East Baton Rouge."

As set forth in petitioner's brief, pages 3-7, the evidence revealed that an automobile equipped with a rented loudspeaker system and containing petitioner and four others, was playing music and speaking intermitently through said loudspeaker system, whereby a large crowd surrounded the area, blocking the highway and sidewalks in the area. The testimony further revealed, as indicated by petitioner's brief, that certain witnesses could hear the sounds from this loudspeaker several blocks away. At the time of his arrest, petitioner had been reading from a paper which he held and he had been directing the crowd gathered around him through this loudspeaker. (T. Page 150, 151-153.) Substantially upon the foregoing evidence, the trial court found petitioner guilty of the offense charged and the Louisiana State Supreme Court refused to grant writs of certiorari in the matter.

Petitioner, at pages 2 and 3 of his brief sets forth what he claims are the two federal questions presented herein. The first question presented by petitioner was never understood as being a question in this case. It is the state's contention that the question herein is posed by the issue between the State of Louisiana and petitioner, as is revealed by the reading of the bill of information. Specifically the question is whether or not the evidence has revealed beyond a reasonable doubt that this accused violated the ordinance in ques-

tion by operating and permitting the operation of a mechanical contrivance to which loudspeakers were attached, in such a manner as to be a nuisance to the neighborhood. Petitioner was not arrested nor tried for merely turning on a loudspeaker, nor was he arrested and tried for merely turning on a loudspeaker during a meeting to protest racial segregation and allegedly oppressive law enforcement. As previously mentioned, he was arrested, tried and convicted for operating and permitting the operation of a mechanical contrivance and device to which loudspeakers were attached in such manner as to be a nuisance to the neighborhood. The substance of what petitioner may or may not have said on that occasion was not and is not at issue in this matter. As petitioner stated at page six of his brief, none of the state witnesses knew much about what petitioner allegedly said over said loudspeaker; it is, thus, quite clear that not only was petitioner not charged or tried for the substance of what he may have said, but that there was no evidence of what was said by him.

As reasons for the granting of this writ, petitioner urges that his conviction was based upon the testimony of four police officers and their supervisor. It is not suggested to this court why the testimony of four police officers and their supervisor is insufficient to sustain a conviction. As a matter of fact, under the law of the state of Louisiana, there exists a presumption that witnesses have told the truth and there exists, also, a presumption that public officers have done their duty. LSA-R.S. 15:432. The evidence re-

vealed that these police officers and their supervisor happened to be in the immediate area of the place of this alleged offense and, thus, were in a position to be proper witnesses in this case. They were not called as witnesses because they were police officers, but because they happened to be in the area, heard the noise emanating from the loudspeaker and saw the crowd blocking the street and sidewalks around the loudspeakers.

It is next contended that writs should be granted herein because petitioner was convicted on a vaguely-worded charge of "nuisance." As previously stated, the charge as set forth in the bill of information is "unlawfully did violate an ordinance of the police jury of East Baton Rouge Parish, Louisiana, in that he did operate and permit the operation of a mechanical contrivance and device to which loudspeakers were attached in such manner as to be a nuisance to the neighborhood." It is not indicated by petitioner in what specific manner the said charge is vague, nor is it indicated which certain words or phrases are allegedly vague in the charge.

It is submitted that while some of the words contained in the charge may be abstract words, that they have, through daily use, acquired a content that conveys to any interested person a sufficiently accurate concept of what is forbidden. The word "nuisance" is well-known and accepted and understood to be a highly obnoxious or annoying thing or person: (2) something offensive or annoying to individuals or community, to the prejudice of their legal rights. See

The American College Dictionary, 1960 Ed. *Kovacs v. Cooper*, Judge, 336 U.S. 77.

In his reasons for granting writs herein, petitioner attempts to absolve himself from the nuisance resulting by others congregating around the loudspeaker and blocking vehicular and pedestrian traffic, by urging that the responsibility of the actions of others cannot be placed upon him. There is a legal presumption in Louisiana law that the defendant intended the natural and probable consequence of his act and that he is responsible for his actions. LSA-R.S. 15:432.

It is respectfully submitted that the most common and typical, natural and probable consequence of the act of a person using a loudspeaker upon the streets would be the congregation of people; a natural and probable consequence which occurred in this case. The very purpose of the use of a loudspeaker or a similar contrivance is to obtain the attention, and call for the congregation, of a large number of people.

Petitioner, in his brief, attempts to limit the nuisance herein to that only which could be derived from the volume of noise emanating from the loudspeaker. The record will show in this case that the other factual circumstance constituting a nuisance herein was the blocking of the sidewalks and streets in the area of the loudspeaker.

It is further urged as reasons for granting of writs herein that the refusal of the trial judge to order desegregation of the court room raises the most serious

questions about the proper administration of justice. It is not specified how segregated seating in the court room would have any serious bearing upon the proper administration of justice. The Louisiana Supreme Court in the recent case of *State of Louisiana v. B. Elton Cox*, 158 So. 2d 172, at page 178, Syllabus 9, with reference to the identical contention, said:

> "The final error complained of in this case—that the spectators in the courtroom in which Cox was tried were segregated, thus denying him a fair trial in violation of the Sixth Amendment to the federal constitution, and the equal protection and due process clauses of the Fourteenth—was adjudicated adversely to the defendant in our decision in the companion cases.
>
> "Counsel do not claim that Cox did not receive a fair and impartial trial in accordance with the accepted rules and regulations fixed for the orderly trial of cases in the courts of this state, as required by our constitution and statutes, or point out in what manner he was prejudiced by the separation of the spectators in the courtroom where he was tried. Instead, it is contended that the constitutional rights of "these spectators" were violated during the process of his trial, and it is his right to assert the denial of the rights of these people purportedly occurring.
>
> "One need only review the record in this case to readily discern the defendant received a fair and impartial trial, being given every consideration and protection afforded all persons accused of crimes under our constitution and laws by a judge who acted throughout with great patience and

forebearance in an effort to maintain a reasonable semblace of order in the courtroom during the trial, as well as to accommodate the colored spectators, even authorizing the use by them of all seats not then occupied by the white people. Finally, on the third day of the trial, he went so far as to have an officer of the court count the number of seats still vacant and then go into the corridors outside the courtroom and inform those congregated there of their availability. Nevertheless, the trial continued with many still remaining vacant.

"To hold, as contended by Cox, that his conviction is a nullity merely because of the segregated condition of the courtroom would of necessity, make every conviction of an accused during the past years in all of the courts of the state, and regardless of race, nullities, with the result that everone now confined in our penal institutions would be entitled to have his conviction set aside, and these thousands of criminals would then be turned loose on the people of the state.

"For the reasons assigned, the conviction and sentence are affirmed."

Under LSA-R.S. 15:557, it is stated:

"§557. Matters not grounds for reversal; exception

"No judgment shall be set aside, or a new trial granted by any appellate court of this state, in any criminal case, on the grounds of misdirection of the jury or the improper admission or rejection of evidence, or as to error of any matter of pleading or procedure, unless in the opinion of the court to which application is made, after an exam-

> "ination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, is prejudicial to the substantial rights of the accused, or constitutes a substantial violation of a constitutional or statutory right."

In view of the foregoing, it is inconceivable how it could be seriously urged that the violation of some spectator's right in a courtroom could be urged by an accused to his benefit and, additionally, how such violation could be urged as probably resulting in a miscarriage of justice or a prejudicial error to the substantial rights, constitutional or statutory, of an accused.

Additionally, petitioner alleges that his arrest and conviction in this case violated his constitutional rights of free speech and free assembly under the "due process" clause of the Fourteenth Amendment. In that connection, he cites *Saia v. N. Y.*, 344 U.S. 558, and *Kovacs v. Cooper*, 336 U.S. 77. In a further attempt to pursuade this honorable court to grant writs herein, petitioner avers that the two cited cases are confusing and that this Honorable Court in order to clarify the jurisprudence of this particular issue, should grant writs herein. The ordinance involved in *Saia v. N. Y.*, was:

> ". . . Section 2. Radio devices, etc.—It shall be unlawful for any person to maintain and operate in any building, or on any premises or on any automobile, motor truck or other motor vehicle, any radio device, mechanical device, or loud speaker or any device of any kind whereby the

> sound therefrom is cast directly upon the streets and public places and where such device is maintained for advertising purposes or for the purpose of attracting the attention of the passing public, or which is so placed and operated that the sounds coming therefrom can be heard to the annoyance or inconvenience of travelers upon any street or public places or of persons in neighboring premises.
>
> "Section 3. Exception—Public dissemination, through radio, loudspeakers, of items of news and matters of public concern and athletic activities shall not be deemed a violation of this section provided that the same be done under permission obtained from the Chief of Police."

At page 1149 of 344 U.S., the Court said:

> "We hold that section three is unconstitutional on its face, for it establishes a previous restraint on the right of free speech in violation of the first amendment which isprotected by the Fourteenth Amendment against state action. To use a loudspeaker or amplifier, one has to get a permit from the Chief of Police. There are no standards prescribed for the exercise of his discretion. . . ."

Thus, in *Saia v. People of the State of New York*, only Section 3 of the Ordinance was declared unconstitutional.

The ordinance involved in *Kovacs v. Cooper*, Judge, 336 U.S. 77, provided:

> "4. That it shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to play, use or operate for advertising

> purposes, or for any other purpose whatsoever, on or upon the public streets, alleys or thoroughfares in the City of Trenton, any device known as a sound truck, loud speaker or sound amplifier, or radio or phonograph with a loud speaker or sound amplifier, or any other instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicle operated or standing upon said streets or public palces aforementioned."

This ordinance was challenged on the grounds that it was violative of the constitutional rights of freedom of speech, freedom of assemblies and freedom to communicate information and opinions to others. The ordinance was also challenged as violative of the due process clause of the Fourteenth Amendment on the ground that it was obscure, vague and indefinite as to be impossible of reasonably accurate interpretation. This Honorable Court found the words of said Section 4 of the ordinance in compliance with the requirements of definiteness and clarity as heretofore discussed.

This Court, in Kovacs, speaking of the Saia case, stated:

> "When ordinances undertake censorship of speech or religious practices before permitting their exercise, the Constitution forbids their enforcement. The Court said in the Saia case, 334 U.S. at pages 560, 561, 68 S. Ct. at pages 1149, 1150:
>
> > 'The right to be heard is placed in the uncontrolled discretion of the Chief of Police. He stands athwart the channels of communi-

> cation as an obstruction which can be removed only after criminal trial and conviction and lengthy appeal. A more effective previous restraint is difficult to imagine."

"This ordinance is not of that character. It contains nothing comparable to the above quoted § 3 of the ordinance in the Saia case."

"Unrestrained use throughout a municipality of all sorts of amplifying devices would be intolerable. Absolute prohibition within municipal limits of all sound amplification, even though reasonably regulated in time, place and volume, is undesirable and probably unconstitutional as an unreasonable interference with normal activity." *Kovacs v. Cooper*, 69 S. Ct. 448.

"Courts are inclined to adopt that reasonable interpretation of the statute which removes it farthest from possible constitutional infirmity." *Kovacs v. Cooper*, 336 U.S. 85.

The ordinance in question here regulates the playing and operation of phonographs, radios, bands, or any other mechanical contrivances or devices which have loud speakers attached thereto, in such manner as not to be a nuisance to the neighborhood. Thus, there is no previous unrestricted censorship as in *Saia*, and the prohibition is not absolute, but the regulation is limited to such operation and playing as not to be a nuisance to the neighborhood.

This Court, in Kovacs, recognized the right of the legislature to regulate sound trucks with amplifiers or loud speakers so as to protect the rights of

others to peace, quiet, tranquility and, also, to protect the rights of others to utilize the streets and sidewalks. As stated at page 88 of Kovacs, this Court said:

> "Opportunity to gain the public's ears by objectionably amplified sound on the streets is no more assured by the right of free speech than is the unlimited opportunity to address gatherings on the street." *Schneider v. State of N. J.*, 308 U.S. 147, 160, 161, 60 S. Ct. 146, 150, 84 L.Ed. 155.
>
> "The preferred position of freedom of speech in a society that cherishes liberty for all does not require legislators to be insensible to claims by citizens to comfort and convenience. To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself. . . . Section of the ordinance bars sound trucks from broadcasting in a loud and raucous manner on the streets. There is no restriction upon the communication of ideas or discussion of issues by the human voice, by newspapers, by pamplets, by dossiers. We think that the need for reasonable protection in the homes or business houses from the distracting noises of vehicles equipped with such sound-amplifying devices justifies the ordinance."

Mr. Justice Frankfurther, in Kovacs, concurring with the majority opinion, at page 96, 336 U.S., states:

> "Only a disregard of vital differences between natural speech, even of the loudest spellbinders, and the noise of sound trucks would give sound trucks the constitutional rights accorded to the unaided human voice. . . . So long as a legislature does not prescribe what ideas may be noisily ex-

> pressed and what may not be, nor discriminate among those who would make inroads upon the public peace, it is not for us to supervise the limits the legislature may impose in safeguarding the steadily narrowing opportunities for serenity and reflection. Without such opportunities freedom of thought becomes a mocking phrase, and without freedom of thought there can be no free society."

Further, in Kovacs, Mr. Justice Jackson, concurring at page 97, states:

> "I join the judgment sustained the Trenton ordinance because I believe that operation of mechanical sound-amplifying devices conflicts with quiet enjoyment of home and park and with safe and legitimate use of street and market place, and that it is constitutionally subject to regulation or prohibition by the state or municipal authority."

In Kovacs, at page 98, Mr. Justice Black, dissenting, states:

> "The question in this case is not whether appellant may constitutionally be convicted of operating a sound truck that emits 'loud and raucous noises.' The appellant was neither charged with nor convicted of operating a sound truck that emitted 'loud and raucous noises.' The charge against him in the police court was that he 'violated the city ordinance 'in that he did, on South Stockton Street, in said City, play, use and operate a devise known as a sound truck.' The record reflects not even a shadow of evidence to prove that the noise was either 'loud or raucous,' unless these words of the ordinance refer to any noise coming from an amplifier whatever its volume or tone."

Continuing at page 100, Mr. Justice Black said:

> "It thus appears that the appellant was charged and convicted by interpreting the ordinance as an absolute prohibition against the use of sound amplifying devices. . . ."

Continuing at page 101, Mr. Justice Black said:

> "The New Jersey ordinance is on its face, and as construed and applied in this case by that state's courts, an absolute and unqualified prohibition of amplifying devices on any of Trenton's streets at any time, at any place, for any purpose, and without regard to how noisy they may be."

Further, in Kovacs, Mr. Justice Rutledge, also dissenting, at page 104, states:

> "I am in accord with the views expressed by my brother BLACK. I think it important, however, to point out that a majority here agree with him that the issue presented is whether a state (here a municipality) may forbid all use of sound trucks or amplifying devices in public streets, without reference to whether 'loud and raucous noises' are emitted."

It is thus apparent that the dissent in Kovacs is based principally upon the basis that the ordinance at issue prohibited the use of sound trucks or amplifying devices without reference to the nuisance which resulted therefrom. The dissent entertained the view that this accused, in Kovacs, stood convicted of a crime for which he was not charged and of which there was no evidence.

CONCLUSION

Both Saia and Kovacs recognize the right of a state or municipality to regulate loud speakers and similar sound devices. The ordinance in question here is such a regulation by the Police Jury of East Baton Rouge Parish, Louisiana. The ordinance in question does not contain the objectionable feature of the ordinance in Saia, which established a previous restraint or regulation on the right of free speech. This ordinance in question does not even contain the objectionable feature of an absolute prohibition against such sound devices mentioned in the dissenting opinion in Kovacs; rather, the ordinance in question regulates the operation of such loud speakers so that they will not be a nuisance to the neighborhood. A nuisance is a well-understood word. A nuisance is identified as a "highly obnoxious or annoying thing or person; sometimes offensive or annoying to individuals or to the community, to the prejudice of their legal rights." Thus, it will be seen by use of the word "nuisance" in the ordinance and in the charge herein, in effect, the operation of loudspeakers is regulated as to all of the elements which may conceivably constitute a nuisance to the neighborhood, such as time, place and decibels.

It is, therefore, respectfully submitted, that on the basis of Saia and Kovacs, the writ herein applied for should be denied.

Respectfully submitted,

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